

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23111 of 2022

Arising Out of PS. Case No.-173 Year-2018 Thana- KEWATI District- Darbhanga

1. PANKAJ LAL DAS Son of Deo Narayan Lal Das Resident of Village - Runway, P.S.- Keoti, District- Darbhanga
2. Pinki Gupta Wife of Ashok Kumar Gupta Resident of Village - Runway, P.S.- Keoti, District- Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ashok Kumar Gupta S/O Late Dayaram Gupta Village- Runway, P.S.- Keoti, District-Darbhangha

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Sunil Kumar Karn, Advocate
For the State	:	Mr. Nitya Nand Tiwary, APP
For Opposite Party No.2 :		N o n e

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 20-03-2024 Despite valid service of notice and two adjournments, nobody appears on behalf of the informant/Opposite Party No. 2.

2. However, learned counsel for the petitioners and learned A.P.P. for the State are present.

3. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973, on behalf of the petitioners for quashing the order dated 10.01.2020 passed by the learned ACJM-VII, Darbhanga, in CRI No. 2990 of 2018 arising out of Keoti P.S. Case No. 173 of 2018 whereby the learned Magistrate took cognizance of offences punishable under Sections 497, 506 and 120B of the Indian Penal Code



against these petitioners.

4. The prosecution story in brief, as per written *fardbeyan* submitted by the informant/Opposite Party No. 2, is that the informant/Opposite Party No. 2 solemnized marriage with Petitioner No. 2 on 08.12.2013. It is alleged that after few days of the marriage, the informant/Opposite Party No. 2 came to know that his wife/Petitioner No. 2 was having illicit relations with her maternal uncle. However, the matter was pacified and Petitioner No. 2 accepted her guilt and promised not to repeat the same. Thereafter, one child was born out of the wedlock, who is presently aged about four years. It is further alleged that Petitioner No. 2 used to go to Darbhanga and whenever the informant/Opposite Party No. 2 raised objections, Petitioner No. 2 used to abuse and assault the informant/Opposite Party No. 2. It is thereafter alleged that on 23.09.2018 at about 10:30 PM, while the informant, Petitioner No. 2 and their son were at home, Petitioner No. 1 came carrying a polythene bag containing several articles and they requested the informant to eat the cucumber and gram and after eating the same, the informant became unconscious and thereafter both of these petitioners established illicit physical relations.



5. It is submitted by learned counsel appearing on behalf of the petitioners that even if the entire allegations as alleged in the F.I.R. are taken to be true, no criminal offence is made out against these petitioners. As a matter of fact, in order to harass and humiliate these petitioners, this false and concocted case has been lodged. It is next submitted that in this case, cognizance has been taken under Section 497 of the Indian Penal Code, which has already been struck down by the Hon'ble Apex Court in the case of *Joseph Shine versus Union of India* reported in *(2019) 3 SCC 39*. It is further submitted that as a matter of fact the F.I.R. has been lodged after lapse of more than 15 days of the alleged occurrence and there is no explanation for the same, which renders the entire prosecution case doubtful. It is further submitted that there is a serious dispute going on between the informant and Petitioner No. 2, as a result of which Petitioner No. 2 has filed M.R. No. 174 of 2019 against the informant, which is pending for adjudication before the learned Principal Judge, Family Court, Darbhanga. Petitioner No. 2 has also filed a contempt petition before the learned Chief Judicial Magistrate, Darbhanga, bearing Complaint Case No. 1062 of 2019. It is further submitted that the present criminal proceeding is manifestly attended with *mala fide* and is maliciously



instituted with an ulterior motive for wreaking vengeance on these petitioners and with a view to spite them due to private and personal grudge. It is further submitted that the case of the petitioners is fully covered by category 7 of the parameters laid down by the Hon'ble Apex Court in the case of *State of Haryana and Others versus Bhajan Lal and Others* reported in *1992 Supp (1) SCC 33* and as such continuation of the proceedings against these petitioners would amount to abuse of the process of court.

6. On the other hand, learned A.P.P. for the State has vehemently opposed the arguments advanced on behalf of the petitioners and supported the order of cognizance submitted that there is specific allegation against these petitioners in the F.I.R. and as such, order of cognizance cannot be said to be unsustainable. Hence, no interference is required by this court at this stage.

7. Heard the submissions advanced by learned counsels appearing on behalf of the parties and perused the materials available on record. It is apparent from the aforesaid facts and circumstances of the case that there is a serious matrimonial dispute between the parties, as a result of which many matrimonial cases are pending between them and only



with a view to humiliate and harass these petitioners, the informant has lodged this false and concocted case. This court finds substance in the submission advanced by learned counsel appearing on behalf of the petitioners that this case has been instituted with an ulterior motive, for wreaking vengeance on these petitioners, due to private and personal grudge and case of the petitioners is covered under Category-7 of the parameters laid down by the Hon'ble Apex Court in the case of ***Bhajan Lal*** (supra).

8. In view of the aforesaid facts and circumstances of the case, the order of the learned A.C.J.M.-VII, Darbhanga, dated 10.01.2020, passed in CRI No. 2990 of 2018 arising out of Keoti P.S. Case No. 173 of 2018, is illegal, improper and bad in the eyes of law.

9. Accordingly, the order dated 10.01.2020 passed by the learned A.C.J.M.-VII, Darbhanga, in CRI No. 2990 of 2018 arising out of Keoti P.S. Case No. 173 of 2018, is hereby quashed with respect to this petitioner.

10. Accordingly, this quashing application is allowed.

(Prabhat Kumar Singh, J)

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